

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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2004 APR 14 P 3:22

BOXCAR MEDIA, LLC, and  
RACEWAY MEDIA, LLC.,

Plaintiffs,

v.

REDNECKJUNK, LLC,  
DR. THOMAS P. CONNELLY, and  
CONNELLY RACING, INC.,

Defendants.

CIVIL ACTION NO. 04-40051-NMG

**MOTION TO SCHEDULE HEARING DATE FOR PLAINTIFFS' MOTION FOR A  
PRELIMINARY INJUNCTION, AND MEMORANDUM IN SUPPORT**

Plaintiffs Boxcar Media, LLC and Raceway Media, LLC (hereinafter, collectively, "Raceway") hereby move to schedule a hearing date on their motion for a preliminary injunction (the "PI Motion") at the Court's earliest convenience.

In support of this motion, Raceway states as follows:

1. As is more fully set forth in the PI Motion, Raceway is seeking a preliminary injunction to halt the ongoing intentional infringement of its trademarks, and the tortious interference of the defendants with Raceway's business. Under the trademarks "Racingjunk," "Racingjunk.com," "Boatingjunk," "Boatingjunk.com," "RVjunk," and "RVjunk.com," Raceway provides an internet forum for individuals seeking to sell used racing, boating and recreational vehicle-related goods, whereby individuals can post classified advertisements offering their items for sale. The defendants have recently opened a competing service under the confusingly similar marks "Redneckjunk," "Redneckjunk.com," "Rjunk," and "Rjunk.com," and have literally stolen Raceway's business by copying advertisements posted by Raceway's customers to the defendants' own site, without prior authorization from either Raceway or its customers.

As a result, there have been multiple instances of actual confusion among Raceway's customers. Meanwhile, the defendants are expanding their use and promotion of the infringing marks, having recently opened an online store selling goods bearing those marks. These activities are causing substantial and irreparable harm.

2. The PI Motion was originally filed in Worcester Superior Court on March 30, 2004, and was received by counsel for the defendants on March 31, 2004. See Federal Express Tracking E-mail attached hereto as Exhibit A. By order of the Superior Court, the defendants' response to this motion was due on April 9, 2004 and a hearing date was set for April 14, 2004. See Order attached hereto as Exhibit B.

3. Notwithstanding the order of the Superior Court, the defendants failed to file an opposition to the PI Motion by April 9, 2004. Accordingly, the motion is unopposed. The defendants' filing of their notice of removal after they failed to comply with the order of the Superior Court regarding their time to respond to the PI Motion should not relieve them of the consequences of failing to comply with that order.<sup>1</sup>

4. For reasons of procedure and clarity, Raceway has now re-filed the PI Motion with the federal caption, but the grounds and text of the motion remain identical to the papers served on the defendants, apart from changes to reflect the new caption of the case and the fact that the motion is now procedurally governed by the Federal Rules of Civil Procedure.

WHEREFORE, Raceway requests that a hearing on the PI Motion be scheduled at the Court's earliest convenience, because the egregious and intentional infringement of Raceway's trademarks is continuing, as is the actual confusion of its customers. Raceway further requests

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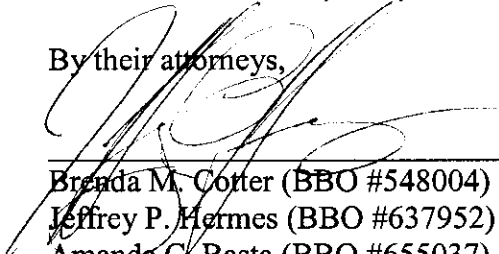
<sup>1</sup> Today's date, April 14, 2004, is the fourteenth day following the date on which the defendants were served with the PI Motion. Therefore, even if the defendants' response time were calculated pursuant to L.R. 7.1(B)(2) of this Court, the defendants' opposition to this motion is due today, and a failure to file a response today would render the PI Motion unopposed.

that the PI Motion be deemed unopposed, or, in the alternative, that the Court set a shortened briefing schedule for the defendants' opposition reflecting the urgency of this matter and the time that the defendants have already had to formulate a response.

Respectfully submitted,

BOXCAR MEDIA, LLC  
RACEWAY MEDIA, LLC.

By their attorneys,



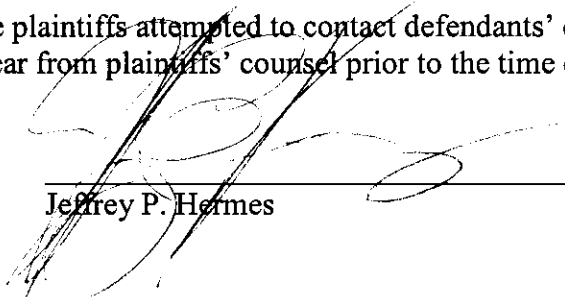
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Brenda M. Cotter (BBO #548004)  
Jeffrey P. Hermes (BBO #637952)  
Amanda C. Basta (BBO #655037)  
BROWN RUDNICK BERLACK ISRAELS LLP  
One Financial Center  
Boston, MA 02111  
(617) 856-8200

Dated: April 14, 2004

**CERTIFICATE OF COMPLIANCE WITH L.R. 7.1(A)(2)**

I hereby certify that counsel for the plaintiffs attempted to contact defendants' counsel regarding the above motion, but did not hear from plaintiffs' counsel prior to the time of filing this motion.



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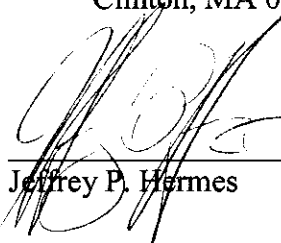
Jeffrey P. Hermes

**CERTIFICATE OF SERVICE**

I, Jeffrey P. Hermes, counsel for the plaintiffs, do hereby certify that on this day, April 14, 2004, I served a copy of the foregoing document by mail and electronic mail to counsel for the defendants:

Robert F. Casey, Jr., Esq.  
ROBERT F. CASEY, JR., P.C.  
Shaker Place  
233 Ayer Road – Suite 12  
Harvard, MA 01451

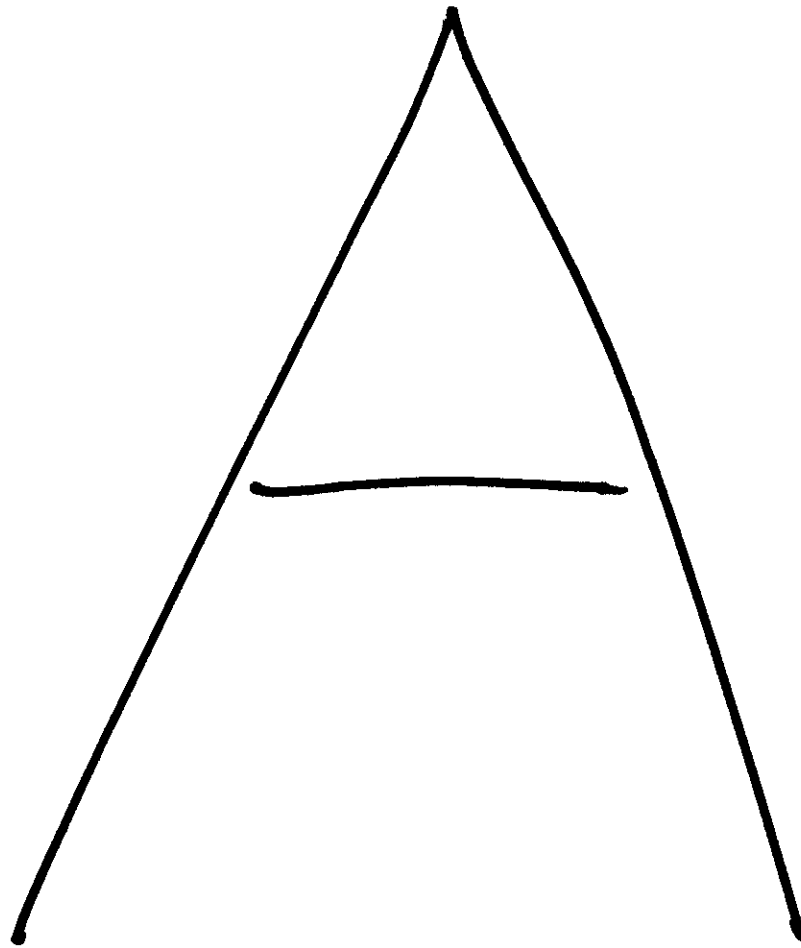
Jean D. Sifleet, Esq.  
120 South Meadow Road  
Clinton, MA 01510



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Jeffrey P. Hermes

Dated: April 14, 2004



**Allman, Natalie S.**

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**From:** sysdeliv@fn3a.prod.fedex.com  
**Sent:** Wednesday, March 31, 2004 11:36 AM  
**To:** Allman, Natalie S.  
**Subject:** FedEx shipment 792604635610

Our records indicate that the shipment sent from AMANDA C. BASTA, ESQUIRE/BROWN RUDNICK B to Jean D. Sifleet, Esquire has been delivered.  
The package was delivered on 03/31/2004 at 10:01 AM and signed for or released by J.SILFLEET.

The ship date of the shipment was 03/30/2004.

The tracking number of this shipment was 792604635610.

FedEx appreciates your business. For more information about FedEx services, please visit our web site at <http://www.fedex.com>

To track the status of this shipment online please use the following:  
[http://www.fedex.com/cgi-bin/tracking?tracknumbers=792604635610  
&action=track&language=english&cntry\\_code=us](http://www.fedex.com/cgi-bin/tracking?tracknumbers=792604635610&action=track&language=english&cntry_code=us)

Disclaimer

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FedEx has not validated the authenticity of any email address.

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COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO. 04-00524B

BOXCAR MEDIA, LLC, and  
RACEWAY MEDIA, LLC,  
Plaintiffs,

v.

REDNECKJUNK, LLC,  
DR. THOMAS P. CONNELLY and  
CONNELLY RACING, INC.,  
Defendants.

**EX PARTE MOTION FOR A SHORT ORDER OF NOTICE**

The plaintiffs hereby request that the Court schedule a hearing on plaintiffs' emergency motion for a preliminary injunction on April 14, 2004 or on the first date thereafter convenient to the Court. The plaintiffs also request that the Court order defendants to file and serve any pleadings or papers in opposition to the motion for an injunction on or before April 9, 2004.

As noted in the affidavit of Brenda M. Cotter, filed with this motion, and the Returns of Service, previously filed with this Court, defendants were served with the complaint in this action on March 25, 2004. In addition, defendants' counsel Jean Sifleet Esq. agreed to accept service in this action (after formal service was in process). Accordingly, she was served with the amended complaint on March 26, 2004.